IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.399 OF 2005

M/s.Veg Fruits Exports &
Wineries (I) Pvt.Ltd. ...Appellant

Vs.

The Maharashtra State Co-op
Bank Ltd. and others ...Respondents

Mr.M.S.Karnik for the Appellant
Mr.Dhamal for the Respondents.

CORAM: A.S.OKA, J.
DATED: MAY 3,2005.

P.C.:

1. Heard Counsel for the parties. By the impugned Judgment and order an application made by the Appellant-Plaintiff for temporary injunction at Exh.5 has been rejected.

2. A suit is filed by the Appellant-Plaintiff for specific performance of the Agreement dated 17th November 2004 executed between the Appellant and the Respondents. It is the case of the Appellant-Plaintiff that the Agreement was for sale of 4,21,000 bottles of sparkling wine at the rate of Rs.95/- per bottle and 90,000 litres of still wine at the rate of Rs.55/- per litre. The case of the Appellant is that though repeatedly readiness and willingness was expressed by the Appellant to perform his part of the contract, the Respondents were not ready and willing to perform their part of the contract. A prayer for injunction made by the Appellant is for restraining the Respondents from accepting offers or from entering into the contract for sale of wine in respect of which there is an alleged agreement.

3. The Application was contested by the Respondent Nos.1 and 2 by filing reply. The case of the Respondent Nos.1 and 2 is that there was no valid contract between the parties.

4. The learned Trial Judge considered the case of the parties on merits. The learned trial Judge recorded a prima facie finding on the basis of correspondence on record that the existence of a valid contract between the parties was not proved. He held that even assuming that there was a valid contract, the loss which may be caused due to the breach of alleged contract can be always compensated in terms of money.

5. After having heard the Counsel for the parties, I find that the learned Judge was right when he came to the prima facie conclusion that remedy of the Appellant was to seek damages on account of alleged breach of contract on the part of the Respondents. The alleged contract was for sale of the bottles of wine by Respondent Nos.1 and 2 in favour of the Appellant. The learned Trial Judge was right when he prima facie held that for breach of such a contract, remedy is to seek compensation.

6. The order granting temporary injunction is always discretionary. The scope of Appeal from Order under Order XLI Rule 1(r) of the Code of Civil Procedure, 1908 is limited. In my view if discretionary power is exercised by the trial Court after considering all the relevant factors,

interference cannot be made with impugned Judgment and Order.

7. There is no merit in the Appeal. Appeal from Order is dismissed with no order as to costs.

8. It is made clear that the learned Trial Judge will decide the pending suit uninfluenced by the impugned Judgment and order and the confirmation thereof by this Court.

9. Parties to act upon an authenticated copy of this order.

Judge.